

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

DOUGLAS HANDSHOE

PLAINTIFF

VS.

CIVIL ACTION NO. 1:15cv382HSO-JCG

VAUGHN PERRET, CHARLES LEARY &
DANIEL ABEL, D/B/A TROUT
POINT LODGE LTD OF NOVA SCOTIA
& IN THEIR INDIVIDUAL CAPACITIES,
PROGRESS MEDIA GROUP LIMITED,
MARILYN SMULDERS, & ASHOKA

DEFENDANTS

**DEFENDANTS PERRET & LEARY'S MOTION TO
DISMISS THIRD AMENDED COMPLAINT**

COME NOW Defendants **Vaughn Perret** and **Charles Leary**, by and through their counsel, Purvis & Co. PLLC, respectfully request that this Court dismiss the Third Amended Complaint [#90] filed by Douglas Handshoe pursuant to Fed.R.Civ.P. 9(b), 12(b)(1), and 12(b)(6). As supported in the accompanying Memorandum Brief, which is incorporated by reference, the Third Amended Complaint should be dismissed for the following independent reasons. The Third Amended Complaint is first subject to dismissal under Fed.R.Civ.P. 12(b)(1) because the Plaintiff does not have standing to bring a claim against Vaughn Perret and Charles Leary. The Third Amended Complaint is also subject to dismissal under Fed.R.Civ.P. 12(b)(6) as a shotgun pleading that fails to give fair notice Charles Leary and Vaughn Perret as to what allegations are being made against them individually. The Third Amended Complaint is due to be dismissed under Fed.R.Civ.P. 9(b) and 12(b)(6) for multiple reasons:

1. Defendants had a good faith basis to protect their copyright privileges secondary a final Judgment of Nova Scotia Supreme Court, 2014; and,

2. The statute of limitations and Rule 13(a) of the Federal and Mississippi Rules of Civil procedure bar the Plaintiff's claims; and,
3. The Defendants are not State Actors.

The Defendants would further show that Plaintiff has not adequately stated a claim to invoke the authority of this Court to grant Declaratory Relief pursuant to Fed. R. Civ. Pro. 57 nor injunctive relief pursuant to Fed. R. Civ. Pro. 65. Because the Third Amended Complaint is deficient as a matter of law in both its form and content, Perret and Leary's Motion to Dismiss should be granted. Given that Plaintiff has already attempted and failed four (4) times to state a claim, and for the other reasons stated in the supporting Memorandum Brief, such dismissal should be with prejudice.

In support of this Motion, Defendants Perret and Leary rely upon the pleadings in this action, the exhibits thereto, their concurrently filed Memorandum of Law in Support of this Motion, and the following exhibits, either referenced in the complaint or a matter of public record, which are attached hereto:

1. Exhibit "A," Company Profile, a public record;
2. Exhibit "B," Annual Statement, a public record;
3. Exhibit "C," Certificate of Formation and Annual Report, public records;
4. Exhibit "D," Second Amended Disclosure Statement – *In re: Slabbed New Media, LLC*, U.S. Bankruptcy Court, So. District, MS, Cause #15-50963-KMS;
5. Exhibit "E," Answer and Object [sic] to United States Trustee's Motion to Convert or Dismiss;
6. Exhibit "F," Petition for Bankruptcy;
7. Exhibit "G," Memorandum Opinion and Order Denying Confirmation of Debtor's Plan for Reorganization and Dismissing Case;
8. Exhibit "H," Order of the Circuit Court of Hancock County, Mississippi;

9. Exhibit "I," Public Notice published by Automattic, Inc.;
10. Exhibit "J," Terms and Conditions of Automattic, Inc.;
11. Exhibit "K," Take Down Notices Referenced in the Third Amended Complaint;
12. Exhibit "L," Notice of Removal and its accompanying exhibits; and
13. Exhibit "M," Order Granting Remand [#8].

WHEREFORE, Defendants Perret and Leary pray that the Court will dismiss Plaintiff's Third Amended Complaint be dismissed with prejudice. Said Defendants also request any further, general, or specific relief as this Court may deem appropriate.

RESPECTFULLY SUBMITTED, this the 15th day of February, 2017.

VAUGHN PERRET, DEFENDANT
and
CHARLES LEARY, DEFENDANT

BY: PURVIS & CO. PLLC

BY: /s/ Jason B. Purvis
Jason B. Purvis, MSB # 100873

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CERTIFICATE OF SERVICE

I, Jason B. Purvis, an attorney for Defendants VAUGHN PERRET AND CHARLES LEARY, hereby certify that, on this day, I electronically filed the foregoing pleading or other paper with the Clerk of the Court via the CM/ECF electronic document filing system, which provides service on all counsel of record. Persons not participating in ECF have been served by other means as indicated below for each (if any):

None

So certified on this, this the 15th day of February, 2017.

/s/ Jason B. Purvis
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